

LE MERIDIEN KUALA LUMPUR v. ZULKARNAIN HUSSIN
& ORS AND ANOTHER APPEAL

HIGH COURT MALAYA, KUALA LUMPUR

AHMAD KAMAL MD SHAHID J

[CIVIL APPEAL NOS: WA-16-12-06-2023 & WA-16-13-06-2023]

17 SEPTEMBER 2024

Abstract – *In the restructuring of wages for the hotel sector, which provides that where the service charge collection is implemented, the employer may convert all or part of the service charge meant for distribution to the employee, to form part of the minimum wages. If it is shown that the employees had consented to it either by virtue of their signature at the acceptance portion of the respective documents, or by conduct, then the said restructuring is not done unilaterally. It is a simple case of an offer and acceptance and the employees have consented to the same. In such situation, the hotel had not made unlawful deductions from the employees' wages in breach of s. 24 of the Employment Act 1955.*

LABOUR LAW: *Wages – Restructuring – Service charge – Whether employer may convert all or part of service charge meant for distribution to employee, to form part of minimum wages – Whether deduction from service charge to top up basic salary unlawful – Whether done with employees' knowledge and consent – Whether restructuring of wages done unilaterally – Whether party signing document bound by terms and conditions contained therein – Whether employees adduced evidence to show how many service charge points they were entitled to – Whether employees' claims filed outside time limit and payslips produced incomplete – Whether intervention of court warranted*

The Guidelines on the Implementation of the Minimum Wages Order ('MWO') 2012 sets out the method of restructuring the wages for the hotel sector which provides that for the hotel sector where the service charge collection is implemented, the employer may convert all or part of the service charge meant for distribution to the employee, to form part of the minimum wages. With the coming into effect of the MWO 2012, the hotel ('appellant') decided to implement the MWO 2012 by restructuring the employees' wages. By a letter dated 1 October 2013, the appellant informed eight respondents ('the eight respondents') of the implementation of the MWO 2012. The eight respondents accepted the letter and the terms contained therein by virtue of their signature at the acceptance portion of the

A respective letters. Meanwhile, for the remaining 16 respondents ('remaining
16 respondents') the appellant informed them of the addition to their basic
B salary in accordance with the implementation of the MWO 2012 in the
relevant years. These remaining 16 respondents had accepted the letter and
the terms contained therein by virtue of their signature at the acceptance
C portion of the respective letters. Subsequently, the respondents filed their
respective claims for the balance of service charges at the Labour Office. It
was the case of the respondents that the deduction from the service charge
to top up basic salary was unlawful and the same ought to be paid back. The
D presiding officer of the Labour Court heard the respondents, considered the
evidence, the position of the law as stated by the Federal Court in the case
of *Crystal Crown Hotel & Resort Sdn Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja*
Hotel, Bar & Restoran Semenanjung Malaysia ('Crystal Crown') and ruled that the
deductions were made unlawfully and the appellant was ordered to pay back
the monies so deducted. The present appeals (Appeal 12 and Appeal 13) were
E filed against the decision of the presiding officer of the Labour Court. The
appellant submitted that the presiding officer of the Labour Court, *inter alia*,
(i) erred in law in failing to appreciate that the respondents failed to prove
the requisite elements of their case; (ii) misconstrued s. 24 of the
Employment Act 1955; (iii) misconstrued the Federal Court decision of
Crystal Crown; and (iv) erred in allowing the respondents' claim although
some claims were time barred and some of the respondents failed to produce
payslips to support their claims.

Held (allowing appeal with costs):

- F (1) The respondents claimed that the appellant had underpaid their services
charges, thus the burden and onus to prove lay with the respondents
(ss. 101 and 102 of the Evidence Act 1950). Hence, in order to prove
their case, the respondents must prove the requisite elements of their
case, namely: (i) that they were entitled to three service charge points;
G (ii) that they must adduce evidence reflecting the value of each service
charge in respect of each month they claimed for; and (iii) that the
amounts claimed by them were deducted from their wages. (para 21)
- H (2) The respondents relied on a document entitled 'Benefit Program' in their
respective bundle of documents which consisted of their employment
contracts to prove that they were entitled to three services charges.
There was, however, no evidence adduced by the respondents to show
how many service charge points they were entitled to. Further, having
perused the employment contracts, the said employment contracts did
not make any reference to any enclosure and did not contain any
signature. The Labour Court erred when it accepted the respondents'

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claims as: (i) there was no reference to the 'Benefit Program' or any enclosure in their employment contracts; (ii) the 'Benefit Program' was not issued on the letterhead of the appellant company; (iii) there was no signature of the appellant's officer on the 'Benefit Program'; and (iv) no questions were posed to the appellant's witness that the 'Benefit Program' was annexed to the employment contracts of those who produced the said document. (paras 25 & 26)

- (3) Even if the 'Benefit Program' had been given together with the employment contract, it could not be said that the respondents were entitled to three service charge points. The respondents did not testify on the level which their positions were at. The payslips produced by the respondents merely state (apart from allowances) the 'basic salary' and 'service charge' components. The payslip did not specify how many service charge points they were entitled to. In this regard, there was no evidence adduced by the respondents that they were entitled to three service charge points as alleged. The respondents also did not adduce any evidence regarding the value of each service claimed for each month. (paras 28, 29 & 31)

- (4) The restructuring of the respondents' wages in this matter was not done unilaterally. A townhall session was held in both Malay and English where there were Q & A sessions and the employees were given copies of the letters in relation to the implementation of the MWO 2012 by the appellant company. The presiding officer of the Labour Court erred in law and in fact when she failed to consider the appellant's evidence that it was already explained to the respondents prior to the execution of their employment contracts that the appellant would be deducting part of their service charge entitlement to meet the minimum wage rate at that time. It is trite that the party signing a document is bound by the conditions contained in it, whether or not he has read or understood it. Since the eight respondents had expressly consented to the terms contained in the letter dated 1 October 2013 by virtue of their signature at the acceptance portion of the respective letters, therefore they were bound by the terms contained therein. (paras 38-42)

- (5) The presiding officer of the Labour Court failed to appreciate that the remaining 16 respondents had consented by conduct to the restructuring of the wages in the consequent years *vide* their signature at the acceptance portion of the respective letters. The appellant did not hide the value of the service charge point and that the value of the service charge point was clearly displayed on the appellant's notice board. If the remaining 16 respondents were entitled to three service charge points, they would

- A know immediately if the appellant had deducted their service charges. However, no complaint was made by them against the appellant and they continued working with the appellant until the filing of their claims at the Labour Court. (paras 44-46)
- B (6) The restructuring of the respondents' wages to meet the minimum wage was done with their knowledge and consent. It was a simple case of an offer and acceptance and the respondents had consented to the same, be it expressly or by conduct. At all times, the respondents had the opportunity to accept or decline the terms and conditions offered by the appellant. The presiding officer of the Labour Court erred in law in
- C ruling that the appellant had made unlawful deductions from the respondents' wages in breach of s. 24 of the Employment Act 1955 and hence, their consent to the same was irrelevant. (paras 53 & 54)
- D (7) The presiding officer of the Labour Court misconstrued service charge as being part of 'wages' (defined under s. 2 of the Employment Act 1955). The presiding officer of the Labour Court erred in law in failing to give effect to and/or have regard to the Guidelines on the Implementation of the MWO 2012 which sets out the method of restructuring the wages for the hotel sector in which it is provided that for the hotel sector where the service charge collection is implemented,
- E the employer may convert all or part of the service charge meant for distribution to the employee, to form part of the minimum wages. This was never a case of the appellant underpaying the respondents their service charges as alleged by the respondents. The respondents' claims were an afterthought as the respondents did not raise any grievances on the matter during the tenure of their employment with the appellant.
- F (8) During the proceedings before the Labour Court, some claims were filed outside the time limit and the payslips produced were incomplete. The presiding officer of the Labour Court had committed an error of law and/or fact and had failed to exercise proper or sufficient judicial appreciation of the evidence in arriving at its decision that warranted the intervention of this court. (paras 64 & 65)
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Case(s) referred to:

- H *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639 CA (*refd*)
Chin Well Fasteners Co Sdn Bhd v. Sampath Kumar Vellingiri & Anor [2005] 4 CLJ 394 CA (*refd*)

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Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v. Kesatuan Kebangsaan Pekerja-pekerja Hotel, Bar & Restoran Semenanjung Malaysia [2021] 4 CLJ 775 FC (*dist*)

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Wan Noor Rizal Ali & Yang Lain v. Le Meridien Kuala Lumpur Owned by Daito Asia Development (M) Sdn Bhd (Labour Summons Case No: KBR/11401/2020/0281) (Unreported) (refd)

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Legislation referred to:

Employment Act 1955, ss. 2, 24

Evidence Act 1950, ss. 101, 102

For the appellant - Vijayan Venugopal & Jamie Goh Moon Hoong; M/s Shearn Delamore & Co

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For the respondent - Bala Murali Ramasamy; M/s RB Murali & Assocs

Reported by Suhainah Wahiduddin

JUDGMENT

Ahmad Kamal Md Shahid J:

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Introduction

[1] The Appeal No: WA-16-12-06/2023 (Appeal 12) and Appeal No: WA-16-13-06/2023 (Appeal 13) relate to what are essentially identical facts. Appeal 12 is fixed to be heard together with Appeal 13.

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[2] It was the case of the respondents that the deduction from the service charge to top up basic salary was unlawful and the same (subject to Limitation Act 1953) ought to be paid back.

[3] The presiding officer of the Labour Court heard the respondents, considered the evidence, the position of the law as stated by the Federal Court in the case of *Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v. Kesatuan Kebangsaan Pekerja-pekerja Hotel, Bar & Restoran Semenanjung Malaysia* [2021] 4 CLJ 775; [2021] 2 MLRA 696; [2021] 4 AMR 841; [2021] 2 MELR 84; [2021] 3 MLJ 466; and ruled that the deductions were made unlawfully and the hotel (appellant) was ordered to pay back the monies so deducted.

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[4] The present appeals have been filed against the decision of the presiding officer of the Labour Court given on 23 May 2023.

[5] The appellant claims that the presiding officer of the Labour Court committed a serious error of law and in fact.

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A [6] After the hearing, I allowed the appellant's appeals. The grounds for my decision appear below.

Background Of The Appeal

B [7] For Appeals 12 and 13, a total of 37 individuals have filed their respective claims at the Labour Court whereby they alleged that the appellant underpaid their service charge.

C [8] Out of the 37 claims, ten claims were struck out by the Labour Court during the proceedings on 10 August 2022, 6 September 2022 and 21 September 2022 as the individuals failed to attend the Labour Court proceedings.

[9] For ease of reference, the date of commencement of employment, reference during the Labour Court proceedings and the sums ordered by the Labour Court for the respondents in the instant appeal are set out below:

D Appeal 12

E	No.	Name of Respondent	Date of commencement of employment	Reference during Labour Court proceedings	Sums ordered by the Labour Court (RM)
	1.	Zulkarnain Bin Hussin	9.7.2018	P22	13,016.30
	2.	Nurul Nadia Binti Ramli	26.1.2016	P20	21,209.00
	3.	Evelone Juin	6.3.2017	P11	19,866.00

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Appeal 13

No.	Name of Respondent	Date of commencement of employment	Reference during Labour Court proceedings	Sums ordered by the Labour Court (RM)
1.	Fairuz Azwan Bin Mohd Ali	2.9.2014	P2	34,224.30
2.	Mohd Daniel Azreen Bin Mohd Radzuan	18.8.2014	P1	27,610.30
3.	Wan Mohammad Norhisyam Azuan Bin Wan Rosdi	23.11.2015	P3	27,310.30
4.	Mohd Shaiful Nizam Bin Mohd Noor	7.3.2016	P4	25,850.00
5.	Mohd Zulfiqar Bin Nawi	14.3.2016	P5	24,310.30
6.	Rahimah Binti Deraman	1.7.2013	P6	33,810.30
7.	Ibrahim Bin Muhamad	22.4.2013	P7	27,210.30
8.	Mohd Amir Bin Mat Roni	1.11.2010	P8	25,902.30
9.	Muhammad Najib Bin Abdul Aziz	7.5.2018	P9	11,810.30
10.	Muhammad Khairul Hafizi Bin Zaini	29.2.2016	P10	26,660.30
11.	Mohd Fitri Bin Abdul Ghani	9.2.2015	P12	28,734.00
12.	Mohammad Amran Sahab Bin Nordin	15.12.2014	P13	32,310.30

A	13.	Mohd Sahrul Naim Bin Busu	26.7.2011	P14	27,974.30
	14.	Mohd Faizal Bin Sulaiman	17.11.2014	P15	33,210.30
B	15.	Aniah Binti Mamat	4.7.2011	P16	31,104.30
	16.	Rashidah Binti Ramli	9.6.2008	P17	10,089.00
C	17.	Crisman Bin Nasra	14.8.2017	P18	17,860.30
	18.	Khairunnissa Binti Baki	6.7.2015	P19	23,460.30
D	19.	Abdul Khair Bin Walimin	16.6.2008	P21	17,310.10
	20.	Noor Azrul Bin Noordin	13.6.2017	P23	18,960.30
E	21.	Anis Satira Surianny Binti Mat Jusoh	3.9.2018	P24	8,010.30
	22.	Abdul Rahman Bin Ghazali	15.4.2013	P25	37,110.30
F	23.	Muhammad Syamir Bin Abdul Latib	22.2.2016	P26	14,400.00
	24.	Mohd Ridhuan Bin Sazali	5.9.2016	P27	25,560.30

G The Background Facts

[10] The background facts herein are adopted with and/or without modifications from the written submission of the appellant and can be summarised as follows.

H [11] The Guidelines on the Implementation of the Minimum Wages Order (MWO) 2012 set out the method of restructuring the wages for the hotel sector which provides that for the hotel sector where the service charge collection is implemented, the employer may convert all or part of the service charge meant for distribution to the employee, to form part of the minimum wages.

I [12] With the coming into effect of the MWO 2012, the appellant decided to implement the MWO 2012 by restructuring the employees' wages.

[13] By letter dated 1 October 2013, the appellant had informed eight respondents (the eight respondents) of the implementation of the MWO 2012. The eight respondents accepted the letter and the terms contained therein by virtue of their signature at the acceptance portion of the respective letters as follows:

No.	Name of Respondent	Page in D1 (Appellant's Bundle of Documents) / Records of Appeal (RR)
1.	Ibrahim Bin Muhamad	3 - 4/468 - 469 RR [3]
2.	Rashidah Binti Ramli	12 - 13/477 - 478 RR [3]
3.	Rahimah Binti Deraman	20 - 21/485 - 486 RR [3]
4.	Mohd Amir Bin Mat Roni	30 - 31/495 - 496 RR [3]
5.	Abdul Rahman Bin Ghazali	33 - 34/498 - 499 RR [3]
6.	Mohd Sahrul Naim Bin Busu	43 - 44/508 - 509 RR [3]
7.	Abdul Khair Bin Walimin	51 - 52/516 - 517 RR [3]
8.	Aniah Binti Mamat	57 - 58/522 - 523 RR [3]

[14] Meanwhile, for the remaining 16 respondents (the remaining 16 respondents), the appellant informed them of the addition to their basic salary in accordance with the implementation of the MWO 2012 in the relevant years. These remaining 16 respondents had accepted the letter and the terms contained therein by virtue of their signature at the acceptance portion of the respective letters. As an example, for P4 please refer to the letters on pp. 6, 7 and 8 of D1 (pp. 471, 472 and 473 of RR [3]) pp. 80 and 81 of D1 (pp. 568 and 569 of RR [3]).

[15] The respondents filed their respective claims for the balance of service charges at the Labour Office in the Federal Territory of Kuala Lumpur. The matter was subsequently heard by the presiding officer of the Labour Court.

[16] The presiding officer of the Labour Court after that handed down a decision dated 23 May 2023 whereby the appellant was ordered to pay the respondents a total sum of RM644,884.10 being the balance of the service charges due to the respondents.

Submission of the parties

[17] The appellant submits that the presiding officer of the Labour Court failed to properly evaluate the entirety of evidence that was adduced before her.

- A [18] In gist, the appellant submits that the presiding officer of the Labour Court:
- (i) erred in law in failing to appreciate that the respondents failed to prove the requisite elements of their case;
- B (ii) misconstrued s. 24 of the Employment Act 1955;
- (iii) misconstrued the Federal Court decision in the case of *Crystal Crown* (*supra*);
- C (iv) failed to even consider the decision of Summons Case No: KBR/11401/2020/0281 where the factual matrix, parties involved, issues and documentary evidence were identical; and
- (v) erred in allowing the respondents' claim although some claims were time-barred and some of the respondents failed to produce payslips to support their claims.
- D [19] The respondents, in opposing the appeal, submit as follows:
- (i) the primary complaint of the respondents before the presiding officer of the Labour Court is that the appellant deducted a certain fixed amount of money monthly from their service charge to top up and meet the mandatory minimum wages law. The respondents argued and obtained a ruling that the said deductions are unlawful and the money so deducted ought to be paid back;
- E (ii) the Federal Court in *Crystal Crown* (*supra*) held that the hoteliers could not utilise the service charge imposed on bills to customers to meet the statutory minimum wage of their employees;
- F (iii) according to the respondents, based on the *Crystal Crown* (*supra*), a payment from the customers of the hotel directly to the employees of the hotel and the hotel does not have any right to use the money to top up salary. According to the apex court, the hotel only holds the service charge paid by the customer in trust for the employees and must pay the same;
- G (iv) the Federal Court went further to clarify any doubt by holding that such a deduction is contrary to the intention of the Parliament and the Act itself. The court held that utilisation of service charges to pay minimum wages is akin to paying the employee with their own money;
- H (v) furthermore, the Federal Court opined that as a service charge is a payment collected from third parties, it does not belong to the hotel. In fact, when a customer pays the service charge as part of the bill, the ownership of monies is immediately transferred to and lies with the employees who are eligible to receive those monies. The hotel merely holds the monies in trust until distribution to the beneficiaries – the
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eligible employees. As the service charge does not at any time belong to the hotel, the hotel is not entitled in law to appropriate and utilise it to meet its statutory obligation prescribed under the National Wages Consultative Council Act (NWCCA) 2011 and the MWOs;

- (vi) in the present case, the appellant admits that the respondents are entitled to payment of service charge, and it deducted a portion of the same to top up basic salary to meet minimum wages order. The witness for the appellant admitted that a fixed amount from the service charge was deducted every month consistently to pay minimum wage. However, the appellant attempted to justify the deduction, by claiming that the deduction was made upon consent by the respondents. The witness further testified that eight respondents gave written consent for deduction; meanwhile 19 others consented to the deduction by conduct because they did not protest the deduction while they worked there;
- (vii) according to the respondents, the eight respondents who signed the letter of consent testified that the letter was not signed willingly. The respondents were not made aware that they had the option to refuse the deduction;
- (viii) the appellant takes the stand that the other 18 respondents gave their consent by way of conduct by not protesting the deductions. There is no evidence to show that there ever was communication between the appellant and the 18 respondents on the deductions contrary to the letter which was signed by the earlier employees such as the eight respondents. The appellant did not lead any evidence to show that these respondents were given any explanation on the deduction for them to make a choice; and
- (ix) the consent, be it by writing or conduct, is irrelevant and *void ab initio* because a fact or an agreement contrary to the law is unenforceable.

The Decision Of The Court

[20] Having perused the evidence produced before the presiding officer of the Labour Court, I find that the presiding officer has failed to exercise proper or sufficient appreciation of the evidence in arriving at its decision.

Failed To Appreciate That The Respondents Failed To Prove Requisite Elements Of Their Case

[21] It is to be noted that the respondents claimed that the appellant had underpaid their service charges, thus the burden and onus to prove lies with the respondents. (See: ss. 101 and 102 of the Evidence Act 1950).

A [22] Hence, in order to prove their case, the respondents must prove the requisite elements of their case, namely:

- (i) that they were entitled to three service charge points;
- (ii) that they must adduce evidence reflecting the value of each service charge point in respect of each month they claimed for; and
- B (iii) that the amounts claimed by them were deducted from their wages.

Entitlement To Three Service Charge Points

C [23] The respondents relied on a document entitled “Benefit Program” in their respective bundle of documents which consists of their employment contracts to prove that they are entitled to three service charges.

D [24] I find that there was no evidence adduced by the respondents to show how many service charge points they were entitled to. If one refers to pp. 121 to 125 C1/pp. 700 to 703 of RR (4) under cl. 4 “remuneration”, it only stated that monthly wage consists of RM900 plus service charge” and did not state that he was entitled to three service charge points.

E [25] Further, having perused the employment contracts, for example on pp. 62 to 64 C1/pp. 618 to 620 RR (4), pp. 44 to 45 C3/pp. 1087 to 1088 RR (6); pp. 57 to 61 C1/pp. 613 to 617 RR (4) and pp. 39 to 43 C3/pp. 1082 to 1086 RR (6), I find that the said employment contracts do not make any reference to any enclosures and does not contain any signature.

F [26] The respondents, who had produced the “Benefit Program”, claimed that the said document was given to them at the same time as their employment contracts. I find that the Labour Court erred when it accepted the respondents’ claims as:

- (i) there was no reference to the “Benefit Program” or any enclosure in their employment contracts;
- G (ii) the “Benefit Program” was not issued on the letterhead of the appellant company;
- (iii) there was no signature of the appellant’s officer on the “Benefit Program”;
- H (iv) apart from the fact that the font in the “Benefit Program” for P2 and P18 was different, the font in the “Benefit Program” produced by P18 differs from the font in his employment contracts;
- (v) no questions were posed to the appellant’s witness that the “Benefit Program” was annexed to the employment contracts of those who produced the said document.

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[27] The respondents did not adduce any evidence to show that the “Benefit Program” was given at the same time as their employment contracts. I noticed that the type of paper on which the “Benefit Program” was printed differs from the paper on which their employment contracts were printed. It is apparent that the “Benefit Program” was of a different format compared to their employment contracts.

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- (i) during cross-examination, P11 admitted that the “Benefit Program” was not given together with his employment contract and in fact, it was not given to him. P11 agreed that his employment contract did not make any reference to the “Benefit Program” as follows:

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S Rujuk soalan 12, eksibit C3 mukasurat 153, 153(a) dan 154, dokumen ini tidak diberikan bersama-sama dengan kontrak perkhidmatan?

J Ya, diberi berasingan.

S Terma-terma dan syarat perkhidmatan diberikan merujuk mukasurat 149, 151(a), 152, 152(1). Adakah ini terma-terma dan syarat yang diberikan?

D

J Setuju

S Adakah apa-apa rujukan lampiran dinyatakan di dalam kontrak?

E

J Tiada

S Lihat mukasurat 153 dan 154, adakah diberikan kepada Encik?

J Tidak

(See: p. 264 of RR [2]).

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- (ii) during cross-examination, P22 confirmed that his employment contract did not make any reference to the “Benefit Program”, conceded that it was a separate document and that he was the one who stapled those two documents together as follows:

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S Dalam mukasurat 121 hingga 125 adakah rujukan untuk Benefit Program?

J Tiada

S Adakah mukasurat 121 hingga 126 atau mukasurat 126 hingga 128 diasingkan?

H

J Diasingkan

S Adakah sakinan asal mukasurat 121 hingga 128?

J Betul

S Siapakan yang ‘stapler’ dokumen mukasurat 121 hingga 128?

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J Saya

(See: p. 367 of RR [2])

- A [28] Even if the “Benefit Program” had been given together with the employment contract, it cannot be said that the respondents were entitled to three service charge points. This is because, if one refers to the “Benefit Program” for P2 on p. 62 C1 (p. 618 of RR [4]) under the “service charge” clause, it only states “each associate in Levels 4B to 1 is entitled to three points or maximum is four points”. Based on p. 57 C1 (p. 613 of RR [4]),
- B P2’s position is “laundry attendant III”, that is, Level 3. Therefore, I am of the view that the “service charge” clause on p. 62 C1 (p. 618 of RR [4]) does not apply to P2. It is also pertinent to note that the respondents did not testify on the level which their positions were at.
- C [29] More importantly, I find that the payslips produced by the respondents (save for those in category 1) for example P2 (p. 65 C1/p. 621 of RR [4]) and P21 (p. 238 C1/p. 798 of RR [4]), the payslip merely states (apart from other allowances) the “basic salary” and “service charge” components. The payslip does not specify how many service charge points
- D they were entitled to. It should also be taken into account that the appellant’s witness had testified that the value of the service charge point given to each employee is not the same. (See: p. 390 of RR [2]). In this regard, there was no evidence adduced by the respondents (save for those in category 1) that they were entitled to three service charge points as alleged by them.
- E [30] The respondents further claimed that they were verbally informed by the appellant’s HR personnel, namely Chin Seng/Soo Ling/Chong, that they were entitled to three service charge points at the time of commencement of their employment. Unfortunately, the respondents did not call Chin Seng/Soo Ling/Chong to testify in the Labour Court in support of their allegations.
- F **The Value Of Each Service Charge Points Claimed For Each Month**
- G [31] The respondents, did not adduce any evidence regarding the value of each service claimed for each month. The respondents relied on photographs which purportedly reflect the value of the service charge points on pp. 3 and 5 C3 (pp. 1073 and 1074 of RR [6]). However, I find the authenticity of these photographs which were adduced during the Labour Court proceedings doubtful.
- H [32] This is because the respondents testified that they did not know when the photographs on pp. 3 and 5 C3 (pp. 1073 and 1074 of RR [6]) [During the Labour Court proceedings the bundle was referred to as C2) were taken and that they were not in the area when those photographs were taken. Their evidence during cross-examination can be gleaned as follows:
- P11
- I S Rujuk eksibit x 2 mukasurat 3, adakah awak bersama-sama dengan orang yang mengambil gambar?
- J Tidak

- S Bagaimana anda tahu gambar ini diambil oleh Wan Nor Hisyam? A
 J Orang lain yang beritahu
 S Adakah nampak orang ini mengambil gambar?
 J Tidak
- (See: p. 267 of RR [2]) B
 P20
 S Rujuk eksibit 2 mukasurat 3, siapa mengambil gambar ini?
 J Tidak Pasti
 S Adakah Puan berada di sana semasa gambar diambil? C
 J Tidak
- (See: p. 347 of RR [2]).
- The Sums Claimed By The Respondents That Were Deducted From Their Respective Wages** D
- [33] On this issue, the respondents have produced their payslips for some of the months claimed by them, but not for all the months which were claimed by them. In respect of the months for which payslips were not produced, there was no evidence that the sums claimed by all the respondents were actually deducted from their wages. The respondents' evidence during cross-examination can be gleaned from the following: E
- P11
 S Sila sahkan mukasurat 155 adalah payslip Mac 2017? F
 J Ya
 S Setuju dengan saya tiada potongan RM500.00 dalam payslip?
 J Tiada
- S Tunjukkan payslip April 2017? G
 J Hilang
 S Tunjukkan payslip May 2017?
 J Mukasurat 157
- S Adakah dinyatakan potongan RM500.00? H
 J Tiada
- S Setuju dengan saya, tiada jumlah potongan RM500.00 dari Jun 2012 hingga Disember 2012?
 J Ya, betul I
 S Tuntutan Encik dari Januari hingga Julai 2020. Mana?
 J Tiada

A S Adakah dokumen lain yang menunjukkan potongan RM500.00 dari servis caj bagi bulan Mac 2017?

J Tiada

S Setuju dengan saya, tiada bukti di hadapan Mahkamah bahawa RM500.00 dipotong dari servis caj mulai Mac 2017 hingga Julai 2020?

B J Setuju

(See: pp. 265 to 266 of RR [2]).

C [34] I find that the respondents' counsel did not cross-examine the appellant's witness on the appellant's ability to produce those payslips. Apart from that, the respondents' counsel did not show the payslips produced in the respondents' bundle of documents to the appellant's witness to verify those payslips.

D [35] Further, the respondents' counsel did not make any request to the appellant to produce the payslips for the months in which the payslips were not submitted by the respondents.

[36] I am of the view that since the burden of proof lies with the respondents, they should have adduced evidence to support their claims.

E **The Respondents Consented To The Deduction Of Their Service Charge Entitlement To Meet The Minimum Wage Rate**

F [37] Having perused the evidence adduced, I find that the presiding officer of the Labour Court failed to appreciate that the eight respondents had expressly consented to the terms contained in the letter dated 1 October 2013 by virtue of their signature at the acceptance portion of the respective letters as can be seen on pp. 3 to 4, 12 to 13, 20 to 21, 30 to 31, 31 to 34, 43 to 44, 51 to 52 and 57 to 58 D1 (pp. 468 to 469, 477 to 478, 485 to 486, 495 to 496, 498 to 499, 508 to 509, 516 to 517 and 522 to 533 RR [3]).

G [38] This court finds that the restructuring of the respondents' wages in this matter was not done unilaterally. The appellant's witness testified *vide* D2 that a townhall session was held in both Malay and English where there were Q & A sessions and the employees were given copies of the letters in relation to the implementation of the MWO 2012 by the appellant company:

H Q9. Are you able to confirm whether the employees who expressly consented to the restructuring of their wages in 2013, were briefed on the redistribution of the value of their service charge points to top-up their basic wages?

Yes, I can confirm.

I 10. when were they briefed on the redistribution of the value of their service charge points to top-up their basic wages?

We had several briefing sessions in October 2013.

11. Where were the briefing held?

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They were held at Broadrick, the Hotel's Function Room on Level 6.

12. Please state the names and designation of the Company representatives who were present at the briefings.

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I was present for the briefings. Apart from myself, Ms Jaclyn Low - Director of Human Resources, Mr. Harvey Thompson - General Manager, Encik Fauzy Wahab - Hotel Manager, Mr. Sukhvindar Singh - Director of Finance, Ms Lam Sook Pin - Paymaster and two (2) representatives from Human Resources (Ms Cheah Soo Ling and Mr Toh Chin Seng) were present. Department Heads of the respective departments were also in attendance.

C

13. What transpired at the briefings?

We explained to our employees on the implementation of the Minimum Wages Order 2012 and that the Hotel will be restructuring their compensation package with effect from 1 October 2013. It was also explained in detail on the calculation as to how the value of their service charge points would be redistributed to 'top up' their basic wages to meet the Minimum Wages Order 2012 of RM900.00 basic salary. We had Encik Fauzy, our ex-Hotel Manager, explain the presentation in Bahasa Melayu to ensure full understanding by all employees. There was ample time for Q & A for all employees to ask questions; those who did not have any questions consented and signed the "Implementation of the Minimum Wages Order, 2012 Restructured Minimum Wage to be Paid W. E. F 1 October 2013" letters on the same day they were briefed.

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(See: pp. 435 to 436 of RR [2]).

[39] I find that the testimony of the appellant's witness was not challenged during cross-examination by the respondents' counsel. Therefore, I view that the foregoing evidence should have been accepted by the Labour Court based on the Court of Appeal case of *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639; [1995] 1 MLRA 546; [1995] 2 MLJ 770; [1995] 3 AMR 2375.

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[40] The presiding officer of the Labour Court erred in law and in fact when she failed to consider the appellant's evidence that it was already explained to the respondents prior to the execution of their employment contracts that the appellant would be deducting part of their service charge entitlement to meet the minimum wage rate at that time.

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[41] It is trite that the party signing a document is bound by the conditions contained in it, whether or not he has read or understood it. In the case of *Chin Well Fasteners Co Sdn Bhd v. Sampath Kumar Vellingiri & Anor* [2005] 4 CLJ 394, [2005] 2 MLRA 89 the Court of Appeal states that:

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- A *The fact that the defendant's representative did not appreciate its contents when he signed it does not affect its validity. It has been held that in the absence of fraud or misrepresentation, a person is bound by a writing to which he has put his signature, whether he has read its contents or has chosen to have them unread (see *L'Estrange v. Graucob* [1934] 2 KB 394; *Serangoon Garden Estate Ltd v. Marion Chye* [1959] MLJ 113; *Majumder v. AG of Sarawak* [1966] 1 MLJ 41).* The defendant is therefore bound by the Contract of Employment.
- B

(emphasis added)

- [42] Since the eight respondents had expressly consented to the terms contained in the letter dated 1 October 2013 by virtue of their signature at the acceptance portion of the respective letters, therefore they are bound by the terms contained therein.
- C

- [43] The eight respondents confirmed that they were not threatened or pressured to sign the letter dated 1 October 2013. The eight respondents also confirmed that they did not make any objection (whether in writing or orally) to the deduction of their service charges and continued to work with the appellant after 1 October 2013. As an example, this court refers to the following evidence during cross-examination:
- D

P7

- E S Bila sedar ada potongan servis caj anda diam sahaja dan tak buat apa-apa bantahan?

J Ya

- F S Semasa letak jawatan adakah anda membangkitkan isu tidak sukarela tentang potongan servis caj untuk 7 tahun atau membuat apa-apa bantahan

J Tidak

S Mukasurat 5 D1. Adakah Encik menerima dokumen ini?

J Ya

- G S Adakah itu tandatangan Encik di bawah surat?

J Ya

S Menerima surat ini lebih kurang pada 3.2.2020?

J Lebih kurang

- H S Isu ini juga pasal top up servis caj?

J Ya

S Bila terima surat ini adakah menimbulkan isu bahawa tidak sukarela?

J Tidak

- I S Diam sahaja?

J Ya

(See: pp. 201 and 203 of RR [2]).

Remaining 16 Respondents

[44] I view that the presiding officer of the Labour Court failed to appreciate that the remaining 16 respondents had consented by conduct to the restructuring of the wages in the consequent years *vide* their signature at the acceptance portion of the respective letters. (See: P27 (pp. 68 to 69 D1/pp. 533 to 534 of RR [3]).

[45] It is pertinent to note that the respondents and the appellant's witness testified that the appellant did not hide the value of the service charge point and that the value of the service charge point was clearly displayed on the appellant's notice board. Hence, I am of the view if the remaining 16 respondents were entitled to three service charge points they would know immediately if the appellant had deducted their service charges. However, I find that no complaint was made by them against the appellant and they continued working with the appellant until the filing of their claims at the Labour Court.

[46] More importantly, I noticed that the respondents did not make any complaint nor file any case that the appellant had purportedly deducted their service charges throughout the tenure of their employment with the appellant or as soon as possible thereafter. Their claims only arose for the first time when they filed their claims at the Labour Office in 2020. This was confirmed by them during cross-examination:

P11

S Arahan saya ialah nilai servis caj poin tidak disembunyikan oleh syarikat setiap bulan. Setuju?

J Setuju

S Pada setiap bulan syarikat pameran nilai servis caj poin dengan jelas di atas papan. Setuju?

J Setuju

S So awak tahu nilai servis caj poin setiap bulan?

J Ya

S So dari tarikh awak mula bekerja 6.3.2017, syarikat ada buat potongan bagi servis caj untuk awak?

J Ya

S Dan awak tahu ini untuk setiap bulan syarikat buat potongan sejak awak mula kerja?

J Ya

S Sejak 2017 hingga Julai 2020, adakah anda membuat sebarang bantahan bagi potongan ini?

J Ya

S So awak setuju bahawa semasa berkhidmat dalam syarikat, awak tahu bahawa potongan dibuat dari servis caj?

- A J Setuju
S Dan awak ada pengetahuan ini sepanjang perkhidmatan dalam syarikat?
J Ya
(See: pp. 266 to 267 of RR [2]).
- B P27
S S & J 13, 14 & 15 P-27(a). Setuju - pada semua masa bekerja dengan syarikat, syarikat telah pameran dgn jelas nilai servis caj pada akhir setiap bulan di atas papan notis
J Setuju
- C S Setuju - syarikat tidak menyembunyikan nilai servis caj pada setiap bulan
J Setuju
S Setuju - memang tahu potongan dibuat dari servis caj sejak mula bekerja dengan syarikat
- D J Tahu
S Pada 4 tahun ini adakah anda membantah secara bertulis kepada syarikat tentang potongan dari servis caj
J Tiada
- E S Pada 4 tahun ini adakah anda membantah secara lisan kepada syarikat tentang potongan dari servis caj
J Tiada
S Pada semua masa anda bekerja adakah mana-mana pihak syarikat yang buat ugutan atau paksaan berkenaan isu potongan dari servis caj
- F J Tiada
S Dalam Penyata Soal Jawab anda kata tidak menimbulkan isu ini kerana khuatir. Cadang - perasaan khuatir ini merupakan satu andaian saja

Misconstrued The Decision Of *Crystal Crown (Supra)*

- G [47] Having perused the facts in the Federal Court case of *Crystal Crown (supra)* and the instant case, I find that it can be distinguished.
- H [48] In *Crystal Crown (supra)*, the dispute arose during the collective bargaining process and the company *Crystal Crown (supra)* had proposed to unilaterally change the terms of employment *via* the collective bargaining process. In a collective bargaining process, the terms must be agreed by both parties, *ie*, the employer and the union, failing which, the dispute will be referred to the Industrial Court for arbitration.
- I [49] However, in this instant case, the respondents were not represented by a union. In the absence of a union, the negotiation on the restructuring of the wages would be conducted between the employer and the individuals themselves.

[50] In this case, the appellant, in accordance with the provisions of the Guidelines for the Implementation of the MWO 2012, had informed the respondents of the implementation and that their wages would be restructured the revised terms of their employment *vide* the letters issued to them.

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[51] I find that all of the respondents consented to the foregoing by virtue of their signature at the acceptance portion of the respective letters and none of them raised any issue on the restructuring of their wages or any complaint on the deduction of their wages throughout the tenure of their employment. Therefore, I view that the presiding officer of the Labour Court erred in law in failing to conclude that the respondents' claims are an afterthought as they did not raise any grievances on the deduction of part of their service charge entitlement to meet the minimum wage rate throughout their employment with the appellant for several years.

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[52] Paragraph 6 of the MWO 2012 stipulates:

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Negotiation for restructuring of wages

Nothing in this Order shall be construed as preventing the employer and the employee, or the trade union, as the case may be, from negotiating on the restructuring of wages under section 7B of the Employment Act 1955, section 9B of the Sabah Labour Ordinance or section 10B of the Sarawak Labour Ordinance, as the case may be, before this Order comes into operation in relation to the employer concerned provided that:

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(a) the restructured basic wages to be paid to the employee shall be in accordance with the minimum wages rates specified in this Order;

(b) the restructured wages shall not be less favourable than the employee's existing wages;

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(c) the restructured wages shall not be less than the amount of wages earned by the employee as agreed in the contract of services before the restructuring of the wages;

(d) the restructuring of the wages shall only involve the payment for work done during the normal hours of work of the employee; and

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(e) the restructuring of the wages shall not cause the employee to lose any remuneration specified under paragraphs (a) to (f) of the definition of "wages" in section 2 of the Employment Act 1955, section 2 of the Sabah Labour Ordinance and section 2 of the Sarawak Labour Ordinance which the employee would be entitled to under the contract of service.

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[53] In the present case, the restructuring of the respondents' wages to meet the minimum wage was done with their knowledge and consent. It is a simple case of an offer and acceptance and the respondents have consented to the same, be it expressly or by conduct. At all times, the respondents had the opportunity to accept or decline the terms and conditions offered by the appellant.

I

- A [54] Based on the foregoing, I am of the considered view that the presiding officer of the Labour Court erred in law in ruling that the appellant had made unlawful deductions from the respondents' wages in breach of s. 24 of the Employment Act 1955 and hence their consent to the same was irrelevant.
- B [55] In so ruling, I find that the presiding officer of the Labour Court misconstrued service charge as being part of "wages" (defined under s. 2 of the Employment Act 1955). Further, in concluding that service charge is part of "wages", the presiding officer of the Labour Court failed to appreciate that the respondents' wages would be in excess of RM2,000 which in turn would bring them outside the purview of the Employment Act 1955.
- C [56] In this case, the presiding officer of the Labour Court erred in law in failing to give effect to and/or have regard to the Guidelines on the Implementation of the MWO 2012, which sets out the method of restructuring the wages for the hotel sector in which it is provided that for the hotel sector where the service charge collection is implemented, the employer may convert all or part of the service charge meant for distribution to the employee, to form part of the minimum wages.
- D [57] Paragraph 3(v) of the Guidelines specifically sets out the method of restructuring of the wages for the hotel sector, as follows:
- E Subject to negotiations between the employer and employee, the method of restructuring of wages is based on the following conditions:
- For the hotel sector where the service charge collection is implemented, the employer may convert all or part of the service charge meant for distribution to the employee, to form part of the minimum wages;
- F [58] Given the above Guidelines which were issued with the specific intention to cater for hotel employees such as the respondents, it is my view that the presiding officer of the Labour Court erred in law in allowing the respondents' claims. The appellant should not be faulted for having relied on the Guidelines.
- G [59] Given the above, I view that the restructuring of the respondents' wages to meet the minimum wage was done with the respondents' full knowledge and consent. This was never a case of the appellant underpaying the respondents their service charges as alleged by the respondents. The presiding officer of the Labour Court erred in law in failing to conclude that the respondents' claims are an afterthought as the respondents did not raise any grievances on the matter during the tenure of their employment with the appellant.
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The Presiding Officer Of The Labour Court Failed To Consider The Decision In Summons Case No: KBR/11401/2020/0281

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[60] In Director General of Labour Summons Case No: KBR/11401/2020/0281 between *Wan Noor Rizal Ali & Yang Lain v. Le Meridien Kuala Lumpur Owned By Daito Asia Development (M) Sdn Bhd*, four complainants filed claims at the Labour Court for the arrears in the payment of service charge points on 20 February 2020.

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[61] I find that there are similarities between *Wan Noor Rizal's (supra)*, case and the present case:

- (i) both cases involved the same company;
- (ii) the counsels representing the complainants and company in both cases were the same;
- (iii) the essence and main issues in both cases were the same, that is, the restructuring of wages to meet the minimum wage rate and whether the employees had consented to the deduction of their service charges;
- (iv) documents with the same contents were issued, especially the letters relating to the restructuring of wages; and
- (v) both cases involved the same categories of employees, *ie*, employees who had expressly consented to the deduction of the service charges and employees who had consented to the deduction of the service charges by conduct.

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[62] It should be noted that the Labour Court in *Wan Noor Rizal's (supra)* dismissed the complainants' claims therein.

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[63] In the present instance, I find that the presiding officer of the Labour Court erred in law in failing to consider the decision in *Wan Noor Rizal (supra)* and/or provide reasons for not referring to the decision of the said case although the same main issues were ventilated in the said case, the same contents of documents were adduced (especially the letters on the restructuring of wages) in the said case and the same company/employer was involved in the said case.

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The Presiding Officer Erred In Allowing The Respondents' Claim Although Some Claims Were Time-barred And Some Of The Respondents Failed To Produce Payslips To Support Their Claim

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[64] During the proceedings before the Labour Court, it was found that some claims were filed outside the time limit and the payslips produced were incomplete, the details, to name a few examples, are set out in the table below. However these factors were not taken into account by the Labour Court:

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No.	Name of Respondent	Reference during the proceedings	Claims outside the time limit	Evidence in relation payslips which have been confirmed by the Respondents during the Labour Court proceedings
1.	Mohd Shaiful Nizam Bin Mohd Noor	P4	No	Payslips were submitted at pages 219 – 235 C1 / pages 778 – 794 RR [4]
2.	Rashidah Binti Ramli	P17	January 2014 – September 2014 (9 months)	a) No payslips for 2014 b) Salary slips submitted: - • 2015 – January, June through to August, October • 2016 – February
3.	Mohd Faizal Bin Sulaiman	P15	January 2014 – August 2014	a) The Respondent cannot claim for January 2014 through to November 2014

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			(8 months)	as the Respondent only commenced employment on 17.11.2014 b) No payslips for: - • 2014 – January through to October • 2015 – 2019 • 2020 – January
4.	Crisman Bin Nasra	P18	No	a) The salary slips submitted were only for: - • 2017 • 2018 except April • 2019 b) No payslips submitted for 2020
5.	Mohd Daniel Azreen Bin Mohd Radzuan	P1	October 2014 – December 2014 (3 months)	The salary slips submitted were only for: - • 2018 – February, June, July, August • 2019 – January, March through to December

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A Conclusion

[65] Given the above, I am of the considered view that the presiding officer of the Labour Court had committed an error of law and/or fact and has failed to exercise proper or sufficient judicial appreciation of the evidence in arriving at its decision that warrants the intervention of this court.

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[66] As such, the appellant's appeal (encl. 1) is allowed with costs of RM500 to be paid by each respondent in Appeal 12 and Appeal 13, respectively, to the appellant subject to the allocatur fee.

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